United States Department of Labor
Employees' Compensation Appeals Board

F.M., Appellant	)	
and	)	**Docket No. 16-1504**
	)	**Issued: June 26, 2017**
U.S. POSTAL SERVICE, POST OFFICE, Winder, GA, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
COLLEEN DUFFY KIKO, Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On July 12, 2016 appellant filed a timely appeal from a June 29, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[1] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish an emotional condition in the performance of duty.

FACTUAL HISTORY

On March 15, 2016 appellant, then a 60-year-old customer service supervisor, filed an occupational disease claim (Form CA-2) alleging that on December 13, 2014 he first became aware of his major depression, anxiety, stress, and insomnia and first realized that his conditions

[1] 5 U.S.C. § 8101 *et seq.*

were caused by mental abuse and stress at work. He noted that a psychologist and psychiatrist had confirmed causal relationship. Appellant stopped work on December 13, 2014 and has not returned.

In a December 14, 2014 letter, appellant contended that the stress level at work had become unbearable for himself and his coworkers. He noted that he had replaced a supervisor one and one-half years ago who retired prematurely due to stress-related conditions. Appellant claimed that this could be verified by employees at the employing establishment. He indicated that he had perfect attendance at work prior to his current absence under the Family Medical Leave Act (FMLA) due to work stress that had affected his physical and mental health.

In a February 22, 2016 statement, appellant attributed his emotional condition to several incidents involving Postmaster R.S. R.S. always appeared very angry and upset when he reported to work which caused appellant to be anxious and have difficulty concentrating on his duties. R.S. closely scrutinized and monitored appellant's every move and decision. R.S. frequently reversed appellant's decisions regarding employees' assignments and continually changed employees' work schedules that had been prepared by appellant. R.S. reversed an employees' scheduled leave requests (which had previously been approved by appellant) to unscheduled leave. He became infuriated and ordered appellant off the workroom floor when appellant changed a clerk's leave slip from unscheduled leave to scheduled leave after the clerk had previously provided proper supporting documentation. The clerk was continually bullied, harassed, humiliated, and intimidated by R.S. and filed more than one Equal Employment Opportunity (EEO) complaints against R.S. regarding his actions.

R.S. physically approached appellant in a threatening manner and stated "do not ever come against me again, you will never win." Appellant was unable to help employees under his supervision. R.S. continually changed qualified sick leave requests to annual leave. Appellant noted that he witnessed R.S. bully, intimidate, and humiliate employees. R.S. constantly harassed employees with medical issues. He closely monitored appellant's telephone conversations, harassed, berated, and intimidated appellant on a regular basis, and always hovered over appellant. Appellant contended that R.S. actions were inappropriate and unjustified as R.S. had acknowledged appellant as an excellent supervisor which was supported by the performance review and the raise he had received in fiscal year 2014. He reached his total saturation point on December 13, 2014 when four employees approached him at different times that day complaining about how R.S. treated them. Appellant became depressed, anxious, and utterly helpless because he could not fix their situations. Later that evening, he submitted a leave slip requesting FMLA leave. Appellant also wrote a letter of complaint to the Postmaster General regarding R.S.

The employing establishment's January 8, 2015 investigation found that appellant's general allegations regarding R.S. had not been substantiated. Appellant noted that only six employees hand-picked by R.S. had been interviewed in the investigation. He claimed that, since filing his complaint, employees told him that R.S. had asked them to take pictures of appellant and his family while they were out in public and to follow his wife on Facebook and report any information to him. They also told appellant that R.S. stated that appellant would never be allowed in the employing establishment. Appellant claimed that R.S. was known to be very vindictive and obsessed with retaliation and revenge. While at home on medical leave,

since December 14, 2014, appellant received a December 14, 2015 letter which threatened to remove him from his job due to his inability to perform his work duties and a January 19, 2016 letter of warning for failure to be in regular attendance. R.S. denied appellant's request for annual leave beginning December 26, 2015 to January 8, 2016, because appellant was not protected under the FMLA.

Appellant submitted a witness statement dated February 29, 2016 from D.M., an employing establishment clerk, who noted incidents that he witnessed of R.S.'s unprofessional conduct and abuse of authority directed towards employees. He noted that appellant took time off work to escape the toll that working under R.S. had on his health. Appellant was subjected to bullying and intimidation and placed in an ethical dilemma by frequently being ordered to do things that were immoral and violated employing establishment policies. He left work to avoid an imminent threat of being constantly verbally accosted by R.S. After appellant's departure, R.S. ordered employees to not allow him to enter the building. D.M. contended that an investigation of R.S.' actions was a charade as neither D.M. or other employees were afforded an opportunity to speak to investigators about his actions. The employees who were interviewed had been preselected and the investigators were known acquaintances of R.S.

Employment records were submitted which included a Request for or Notification of Absence dated December 13, 2014 due to stress. Correspondence between appellant and the employing establishment addressed, among other things, an investigation of his workplace concerns, continued absence from work, and medical inability to perform his work duties. The correspondence included the employing establishment's January 19, 2016 letter of warning and request for medical documentation in support of his absence from work as of December 15, 2014.

Medical reports from Dr. Colleen O. McLemore, an attending Board-certified psychiatrist, and Dr. Paul J. Cardozo, an attending psychologist, indicated that appellant had stress, increased anxiety not otherwise specified, insomnia, and recurrent severe major depressive disorder without psychotic features and that he was totally disabled from work commencing December 15, 2014.

In a March 22, 2016 letter, R.S. challenged appellant's claim. He contended that appellant stopped work on December 13, 2014, but had not filed his FECA claim until March 15, 2016. R.S. noted the issuance of the January 19, 2016 letter of warning and appellant's failure to attend a March 1, 2016 investigative interview concerning his failure to be in regular attendance. He indicated that appellant's Form CA-2 indicated that he planned to return to work, yet two days later on March 17, 2016 he submitted paperwork for his retirement, which became effective on March 31, 2016. R.S. maintained that appellant had been previously treated for his alleged emotional conditions. He asserted that there was no medical evidence to support appellant's claim for a work-related emotional condition.

By letter dated April 14, 2016, OWCP advised appellant about the deficiences of his claim and requested that he submit additoinal factual and medical evidence. It also requested that the employing establishment respond to appellant's allegations.

In response to OWCP queries, R.S., in an April 25, 2016 letter, disagreed with appellant's allegations. He claimed that there were no aspects of the customer services supervisor job that were stressful. Appellant received a lateral transfer from an office of 142 employees to an office with 39 employees. He was responsible for scheduling and daily supervision of 21 carriers and 8 clerks. Appellant's workday started at 6:00 a.m. and he supervised 3 clerks until 8:30 a.m. when 21 carriers and an additional clerk reported to work. By 10:30 a.m. each day, the 21 carriers were out of the office delivering their route until their return around 2:30 p.m. By 12:30 p.m. each day, the three early morning clerks left work and the three afternoon clerks reported. From about 10:30 a.m. to 2:30 p.m. each day there were normally only four clerks and no carriers in the office. R.S. noted that he arrived to work by 7:45 a.m. each day and assisted appellant throughout the day by answering telephones, helping with customer inquiries/concerns, and other management duties. Appellant took lunch from 10:00 a.m. to 11:00 a.m. daily and left work at 3:00 p.m. (prior to many carriers returning from their routes). R.S. twice allowed appellant to change his scheduled days off when his wife's job changed. On December 13, 2014 R.S. called appellant in the morning and afternoon, but appellant mentioned nothing other than office operations.

On December 15, 2014 R.S. noticed appellant's December 13, 2014 note and leave request. Appellant did not answer his telephone calls or respond to voicemails. R.S. noted that appellant's actual job duties did not vary from his official position description. He reported that he had been a manager since 1986 and postmaster since 1993. R.S. believed that there was always a professional line between management and employees. He felt that appellant's performance suffered because beginning in 2014 he socialized and fraternized outside of work with his employees. R.S. contended that appellant no longer wanted to hold his employees accountable for their actions. He spoke to appellant several times about this. In specific response to allegations, R.S. indicated that he had always reviewed weekly employee schedules before posting to ensure that all the clerk and route assignments were covered. He maintained that he would never order a supervisor off a workroom floor, but there were times when he asked or instructed appellant to come to his office to privately discuss matters about his declining performance. R.S. and appellant had side-by-side desks on the workroom floor and, while he had heard some of his telephone conversations, he did not intentionally listen to them. He indicated that appellant had an office where he could also take his telephone calls.

Regarding the allegation of berating and harassment, R.S. noted that appellant told him, employees, and other managers on many occasions how he loved working at the employing establishment and could not thank R.S. enough for letting him work there.

Appellant and his wife attended R.S.'s holiday open house in December 2013. He told R.S.'s wife and guests how grateful and much better his life was since coming to work there. R.S. related that he had asked appellant if he was a hard boss and appellant responded that he was not as hard as his last boss and that working at the employing establishment was a piece of cake. R.S. contended that, based on his past comments, it did not appear that his supervisory job was stressful. R.S. related that there were times when the job may have become hectic, due to unscheduled absences or heavier workloads than expected, but there were only four employees in the office from 10:30 a.m. to 2:30 p.m. He noted that appellant had a lawn chair in his office and, in nice weather, he would sit on the back dock and read a book during his lunch hour. Appellant sometimes moved the chair to a grassy area and leaned back to enjoy the sunshine and

a catnap. R.S. indicated that the December 14, 2015 letter offered appellant an option to contact the district reasonable accommodation committee (DRAC) to see if a position could be identified within his restrictions, but he declined.

Regarding a threat to remove appellant from his employment, he noted that this letter was mailed to him because he had been on sick leave for one year and the monthly letter he provided was exactly the same as his previous letters with the exception of the date. R.S. maintained that appellant's absence from work for one year with no projected return required weekly overtime to replace him. In June 2014, he discovered that on December 12, 2014 appellant had asked five employees for support if he could get R.S. in trouble. R.S. noted that, based on appellant's letter to the Postmaster General, he was investigated and random employees were interviewed, but the investigation found no wrongdoing by R.S.

R.S. submitted a copy of the December 14, 2015 letter in which he addressed appellant's medical inabilty to perform his duties. He indicated that appellant's absence from work had exceeded the allotted time for FMLA protection and was recorded as unscheduled. In addition to recommending that appellant schedule a meeting with DRAC, R.S. had also advised appellant that he could apply for disability retirement, if eligible, or voluntarily resign.

By letter dated December 16, 2015, appellant responded to R.S.'s letter. He indicated that he had not requested FMLA leave. Rather, appellant was requesting the same sick leave that had been utilized, approved, and concurrent with his FMLA leave. He disagreed that his absence from work should be deemed unscheduled as he had provided acceptable medical documentation, in advance, every 30 days from two of his physician's who currently treated him. Appellant related that he would consider the option of scheduling a meeting with DRAC in the future based on recommendations from his psychiatrist and psychologist. R.S. submitted a job description for appellant's supervisory position.

In a May 9, 2016 response to queries from OWCP, appellant reiterated that his severe anxiety, depression, and resultant disabilty were caused by bullying and intimidation by R.S. He noted that one of his two EEO complaints was resolved on January 7, 2016 and required R.S. to process a pay adjustment in light of his wrongdoing. Appellant's second EEO case was currently in the formal complaint stage of the process. He indicated that he had previously experienced work-related stress.

Appellant submitted a witness statement dated April 27, 2016 from C.M., a coworker, who indicated that she and other female employees had been bullied, yelled at, cursed out, and made to cry by R.S. C.M. witnessed R.S. bullying appellant. R.S. screamed at appellant for no reason and belittled and humilitated him in front of employees. He did not allow appellant to assist his employees or perform his supervisory duties. R.S. held a meeting in which he told employees to report on appellant's actions and spy on his wife on Facebook. A January 2015 investigation was conducted regarding his bullying tactics and C.M. and other employees were told that they would have an opportunity to talk about work conditions. However, only employees preselected by R.S. were interviewed. When C.M. and employees complained, they were told the investigation had been completed and nothing was ever done to correct his behavior.

In a February 29, 2016 report, Drs. Cardozo and McLemore reiterated their prior diagnoses and opinion that appellant was totally disabled. The physicians maintained that his disorder did not develop until he had conflicts with the employing establishment.

By decision dated June 29, 2016, OWCP denied appellant's claim for an emotional condition because he had not established any compensable employment factors.

LEGAL PRECEDENT

A claimant has the burden of proof to establish by the weight of the reliable, probative and substantial evidence that the condition for which he or she claims compensation was caused or adversely affected by factors of his or her federal employment.[2] To establish that he or she sustained an emotional condition in the performance of duty, a claimant must submit: (1) factual evidence identifying employment factors or incidents alleged to have caused or contributed to his or her condition; (2) medical evidence establishing that he or she has an emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the identified compensable employment factors are causally related to his or her emotional condition.[3]

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. There are situations where an injury or an illness has some connection with the employment, but nevertheless does not come within the concept or coverage of workers' compensation. Where the disability results from an employee's emotional reaction to his or her regular or specially assigned duties or to a requirement imposed by the employment, the disability comes within the coverage of FECA.[4] On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his or her frustration from not being permitted to work in a particular environment or to hold a particular position.[5]

Administrative and personnel matters, although generally related to the employee's employment, are administrative functions of the employing establishment rather than the regular or specially assigned work duties of the employee and are not covered under FECA.[6] However, the Board has held that where the evidence establishes error or abuse on the part of the employing establishment in what would otherwise be an administrative matter, coverage will be afforded.[7] In determining whether the employing establishment has erred or acted abusively, the

[2] *Pamela R. Rice*, 38 ECAB 838 (1987).

[3] *See Donna Faye Cardwell*, 41 ECAB 730 (1990).

[4] *Trudy A. Scott*, 52 ECAB 309 (2001); *Lillian Cutler*, 28 ECAB 125 (1976).

[5] *Gregorio E. Conde*, 52 ECAB 410 (2001).

[6] *See Matilda R. Wyatt*, 52 ECAB 421 (2001); *reaff'd on recon.*, 42 ECAB 556 (1991); *Thomas D. McEuen*, 41 ECAB 387 (1990).

[7] *See William H. Fortner*, 49 ECAB 324 (1998).

Board will examine the factual evidence of record to determine whether the employing establishment acted reasonably.[8]

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed factors of employment and may not be considered.[9] If a claimant does implicate a factor of employment, OWCP should then determine whether the evidence of record substantiates that factor. When the matter asserted is a compensable factor of employment and the evidence of record establishes the truth of the matter asserted, OWCP must base its decision on an analysis of the medical evidence.[10]

ANALYSIS

The Board finds that appellant failed to meet his burden of proof to establish an emotional condition causally related to factors of his federal employment. The Board notes that he did not attribute his emotional condition to the performance of his regular or specially assigned duties as a supervisor of customer services under *Lillian Cutler*.[11] Rather, appellant has alleged in general and broad terms that his supervisor, R.S., bullied and harassed appellant, verbally abused him, changed his decisions regarding employee assignments and employee leave requests, threatened his removal, and denied appellant's leave request.

As a general rule, a claimant's reaction to administrative or personnel matters falls outside the scope of FECA.[12] The Board has long held that disputes regarding leave,[13] the assignment of work,[14] investigations,[15] monitoring work activities,[16] disciplinary matters,[17] and assessment of work performance[18] are administrative functions of the employing establishment

[8] *Ruth S. Johnson*, 46 ECAB 237 (1994).

[9] *Dennis J. Balogh*, 52 ECAB 232 (2001).

[10] *Id.*

[11] *Supra* note 4.

[12] *Carolyn S. Philpott*, 51 ECAB 175 (1999); *see supra* notes 6-8.

[13] *Jose L. Gonzalez-Garced*, 46 ECAB 559 (1995).

[14] *Robert W. Johns*, 51 ECAB 137 (1999).

[15] *G.S.*, Docket No. 09-0764 (issued December 18, 2009).

[16] *V.W.*, 58 ECAB 428 (2007).

[17] *C.T.*, Docket No. 08-2160 (issued May 7, 2009).

[18] *Elizabeth W. Esnil*, 46 ECAB 606 (1995).

and, absent error or abuse, are not compensable.[19] Absent evidence establishing error or abuse, a claimant's disagreement or dislike of such a managerial action is not a compensable factor of employment.[20]

In this case, appellant has submitted insufficient evidence to substantiate these claims. He alleged that R.S. made it difficult for him or prevented him from performing his supervisory duties by closely scrutinizing and monitoring him and changing or reversing his decisions. However, as noted, the monitoring of work activities is an administrative matter. Mere disagreement or dislike of a supervisory or of a managerial action will not be compensable, absent evidence of error or abuse.[21] Appellant has not provided sufficient evidence to show that R.S. erred in monitoring appellant's work. R.S. explained the reason for his actions, noting that he had a responsibility to ensure that all clerk and carrier route assignments were covered. The Board finds that R.S. provided a reasonable explanation for his actions such that appellant has not established a compensable factor of employment in this regard.

Appellant also has not submitted evidence showing error or abuse with regard to his allegations that R.S. improperly sought to remove or discipline him and wrongly denied his leave requests.[22] R.S. explained that he sent appellant similar letters every month as appellant had been on sick leave for a year. The Board notes that R.S. provided a copy of the December 14, 2015 letter noting that appellant's work absence exceeded the time allowed under the FMLA and therefore his leave was recorded as unscheduled. The Board advised appellant of options he could take. The record also contains the employing establishment's January 19, 2016 letter of warning which requested medical documentation to support appellant's absence. Appellant has not shown how these letters were erroneous or how R.S. otherwise acted unreasonably with respect to these administrative matters.

Likewise, appellant's contention, that the employing establishment's investigation into his allegations was a charade, has not been factually established. As noted, matters involving investigations are administrative in nature.[23] Appellant's general allegations, without supporting evidence do not rise to the level of a compensable employment factor.

With respect to appellant's allegations of harassment, mere perceptions of harassment or discrimination are not compensable; a claimant must establish a basis in fact for the claim by supporting his allegations with probative and reliable evidence.[24] Unsubstantiated allegations of harassment or discrimination are not determinative of whether such action occurred. A claimant must establish a factual basis for his or her allegations that discrimination occurred with

[19] *Charles D. Edwards*, 55 ECAB 258 (2004).

[20] *Donney T. Drennon-Gala*, 56 ECAB 469 (2005).

[21] *C.S.*, 58 ECAB 137 (2006).

[22] *See supra* notes 13, 17.

[23] *Supra* note 15.

[24] *Curtis Hall*, 45 ECAB 316 (1994); *Margaret S. Krzycki*, 43 ECAB 496 (1992).

probative and reliable evidence.[25] Appellant has not submitted sufficient evidence to establish his assertions of harassment or intimidation as factual nor did he provide a sufficient description of specific incidents. He submitted witness statements dated February 29 and April 26, 2016 from his coworkers, D.M. and C.M. While they stated generally that appellant had been bullied and intimidated by R.S. and that R.S. ordered employees to not allow appellant back into the building and to report his actions outside of work and spy on his wife on Facebook, their statements did not contain any specific details. D.M. and C.M. failed to address specific dates or what occurred between the parties regarding specific incidents.[26] In denying these allegations, R.S. explained the nature of his job and appellant's job and asserted that appellant seemed to enjoy his job and that, when appellant did need to be counseled on declining performance, he would ask appellant to come to his office to discuss the matter. R.S. acknowledged that he heard some of appellant's telephone conversations because their desks were side by side on the workroom floor, but he denied intentionally listening to them. He denied berating appellant.[27] R.S. noted that an employing establishment investigation of his alleged actions failed to establish any wrongdoing on his part. In these circumstances, appellant's allegations constitute mere perceptions or generally stated assertions of dissatisfaction with a superior at work and do not establish his claim for an emotional disability.[28] The Board finds that appellant has not established a compensable employment factor with regard to his allegations of harassment.

As appellant failed to establish a compensable employment factor, the Board need not address the medical evidence of record.[29]

On appeal, appellant contends that the evidence of record establishes his claim. He notes that he continues to be treated by a psychiatrist and psychologist and takes medications for depression and anxiety. Based on the findings and reasons stated above, the Board finds that his argument is not substantiated.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

[25] *G.S.*, Docket No. 09-0764 (issued December 18, 2009).

[26] *See supra* note 16 (no compensable factor established where a coworker advised that she had witnessed harassment of appellant by her supervisor on a daily basis where appellant felt intimidated by her supervisor's behavior; the coworker's statement did not describe specific instances of harassment in sufficient detail to establish a factual basis for the claim).

[27] *See supra* note 17 (while verbal abuse may constitute a compensable factor of employment, not every statement uttered in the workplace will be covered by FECA; a raised voice in the course of a conversation does not, in and of itself, warrant a finding of verbal abuse).

[28] *See Debbie J. Hobbs*, 43 ECAB 135 (1991).

[29] *Katherine A. Berg,* 54 ECAB 262 (2002).

CONCLUSION

The Board finds that appellant has failed to meet his burden of proof to establish an emotional condition while in the performance of duty.

ORDER

IT IS HEREBY ORDERED THAT the June 29, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 26, 2017
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board